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March 26, 2007

TO: JOHN BAZA

FROM: RON GEORGE

MEMORANDUM CONCERNING WRIGHT/GARFF SMALL MINE APPLICATION.

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DIV. OF OIL, GAS & MINING

**IN THE MATTER OF:
THE APPLICATION OF WRIGHT/GARFF
FOR A SMALL MINE PERMIT**

**MEMORANDUM OF LON THOMAS IN SUPPORT OF DECISION TO NOT
PROCESS THE APPLICATION OF WRIGHT/GARFF
TO CONDUCT SMALL MINING ACTIVITY**

This memorandum is submitted at the request of the Department Head of the Department of Natural Resources by Lon Thomas and Star Stone Quarries (Lon Thomas). It was requested that Lon Thomas and Wright/Garff submit memorandums addressing the question whether or not a permit could be issued to Wright/Garff, in essence, over the top of the permit of Lon Thomas. Lon Thomas supports the findings and the decision of the staff of the Department to refuse to process the application of Wright/Garff, therefore effectively denying the same.

1. THE HOSTILITY OF WRIGHT/GARFF.

The staff made a finding that there is hostility between Lon Thomas and Wright/Garff. This certainly is correct. As stated at the previous informal hearing by counsel for Lon Thomas an attempt was made to sit down with Ed Rogers and see if any solution could be negotiated. Ed Rogers at that time stated that he would negotiate nothing, that he would appeal at every level until he got his permit and that he would see that Lon Thomas was kicked off the site. There is pending litigation between the parties in which Ed Rogers has falsely accused Lon Thomas of stealing stone and Wright/Garff has refused to renew the previous lease for Lon Thomas to continue to quarry building stone on the property. Even after the lease was terminated with Wright/Garff Ed Rogers has made additional false allegations that Lon Thomas has stolen building stone.

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2. LON THOMAS HAS VESTED RIGHTS.

Vested rights in permits are universally protected. The California Supreme Court has stated the vested rights rule as follows: "It has long been the rule in this state and in other jurisdictions that if a property owner has performed substantial work and incurred substantial liabilities in good faith reliance upon a permit issued by the government, he acquires a vested right to complete construction in accordance with the terms of the permit. (*Dobbins v. City of Los Angeles* (1904) 195 U.S. 223 [49 L.Ed. 169, 25 S.Ct. 18]; *Trans-Oceanic Oil Corp. v. Santa Barbara* (1948) 85 Cal. App. 2d 776; 784 [194 P.2d 148]. In Utah to obtain a vested right in a permit in an analogous zoning situation the court in *Western Land Equities v. City of Logan*, 617 P.2d 388 (Utah 1980), held that an applicant is entitled to a building permit or subdivision approval if his proposed development meets the zoning requirements in existence at the time of his application and if he proceeds with reasonable diligence, absent a compelling, countervailing public interest.

In water law cases an applicant for a permit must make a prima facie showing that the granting of the permit will not impair existing vested water rights. *Provo Water Users Association v. Lambert*, 642 P.2d 1219 (Utah 1982). If the vested right is a significant right it may not be extinguished or abridged by a body lacking judicial power. *Whaler's Village Club v. California Coastal Com.* 173 Cal.App.3d 240. The doctrine is applicable to land use and underwrites a vested right to a particular use of land in special circumstances when the landowner has acted in accordance with established law, or with the permission of the appropriate governmental agencies. *id.* A permit to use land cannot be revoked or altered arbitrarily. *Emmett McLoughlin Realty, Inc. v. Pima County*, 58 P.3d 39, 43 (Ariz.Ct.App.2002)

By granting Lon Thomas a large mining permit he obtained a vested right to continue operations for the life of the mine and reclamation efforts thereafter that cannot be altered or revoked unless he violates the terms of the permit, thereby giving him vested rights. The suggestion of Mr. Rogers that the department revoke Lon Thomas' permit to allow Wright/ Garff to quarry has no basis in the statutes or regulations governing this department and would offend the principle of vested rights. Only if Wright/Garff could make a prima facie showing that the granting of the Wright/Garff permit would not infringe on the vested rights of Lon Thomas to conduct his present operations and reclamation should a permit be issued to it.

3. WRIGHT/GARFF CAN QUARRY BUILDING STONE AFTER LON THOMAS HAS FINISHED RECLAMATION.

Wright/Garff could have included in the building stone lease they granted to Lon Thomas that at the end of the lease Lon Thomas would be required to transfer his mining and reclamation permits to Wright/Garff. If they had done so we would not have the present conflict. Failing to do so they now have no complaint that Lon Thomas can continue mining operations and finish his reclamation before they commence to quarry the remaining building stone. It should have been obvious to Wright/Garff when they leased the property to Lon Thomas that if they did not allow him to continue to quarry building stone that they would then have to wait to quarry until Lon Thomas had finished his operations and reclaimed the property.

4. THE ACTIVITIES OF LON THOMAS AND WRIGHT/GARFF ARE INCOMPATIBLE.

Lon Thomas has the right under his permit to mill stone that he is presently bringing in from other property. That is to process the stone by splitting and placing in pallets. He also has

• **Crush** – Put the DMM loose and crush it. Both of these activities are inherently